Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,

Petitioner,

v.

ROCK-N-AROUND TRUCKING, INC.,
an Illinois corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the provisions of a collective bargaining agreement requiring contributions to Taft-Hartley Trust Funds based on work covered by a collective bargaining agreement and actually performed by owner-operators, who are not employees, violates 302(a)(1) of the Labor Management Relations Act (29 U.S.C.A. § 186(a)(1)).

PARTIES TO THE PROCEEDINGS

Petitioner:

Lou Mazzei is a Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund. The Funds are Taft-Hartley Trust Funds sponsored by Local 786 of the International Brotherhood of Teamsters and are jointly trusteed with management trustees from employers in Cook County, Illinois engaged in the transportation of building materials.

Respondent:

Rock-N-Around Trucking Inc. is an Illinois corporation engaged in the transportation of building materials. Respondent signed a labor agreement with Local 786 of the International Brotherhood of Teamsters and it operates through the use of employee drivers and owner-drivers who own and lease their trucks to Respondent pursuant to written agreement.

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Appendix A — Opinion Of The United States Court Of Appeals For The Seventh Circuit Dated And Decided April 6, 2001 ..... 1a

Appendix B — Memorandum Opinion And Order And Judgment Of The United States District Court For The Northern District Of Illinois, Eastern Division Dated February 1, 2000 ..... 20a

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 246 F.3d 956 (App. *infra* 1a-19a). The opinion of the District Court is unpublished, it is reported at 2000(WL)152137 (App. *infra* 20a-37a).

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on April 16, 2001. The Petition for a Writ of Certiorari therefore is due on or before July 5, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Labor Management Relations Act

§ 186. Restrictions on financial transactions

(a) Payment or lending, etc., of money by employer or agent to employees, representatives, or labor organizations.

It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser or consultant to an employer or who acts in the interest of an employer to pay, lend, deliver, or agree to pay, lend, or deliver, any money or thing of value —

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee, directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

* * *

(c) Exceptions

The provisions of this Section shall not be applicable.

(5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their

families, and dependents (or such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either, from principle or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the

results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by an employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at education institutions, (B) child care centers for preschool and school age dependants of employees.

STATEMENT OF THE CASE

This case arises from a contract dispute between multi-employer pension and welfare benefit funds and a contributory employer over the legality of the payment of pension and welfare contributions on the basis of work performed by certain truck drivers who own the trucks that they operate.

The Petitioner, a Trustee of the Funds, sued the Respondent in order to enforce a contract provision which required Respondent to contribute into a trust certain amounts based on weeks worked by owner-drivers covered by the agreement. The contract contained a specific provision regarding owner-drivers who operated their own vehicles and provided that such owner-drivers would be "covered within the terms and conditions of the agreement".

Respondent had a number of owner-drivers providing trucking services and remitted contributions based on the weeks worked by certain of those drivers to the Funds. Petitioner filed a lawsuit seeking to determine the full number of weeks worked by all of the owner-drivers and through discovery, conducted an audit claiming contributions for the weeks worked on the basis of the contract that Respondent had signed with the Union. Respondent denied its liability to make the contributions sought by the audit on the basis that the contributions were not owed under the language of the contract and even if the contributions were owed, payment was illegal under the provisions of 29 U.S.C. § 186(a)(1) as the truck drivers were not employees.

The parties submitted the case to the District Court on cross-motions for summary judgment. The Court found that the contract language did require contributions based on the weeks worked by the owner-drivers, however, the Court noted that this was a "hollow victory" as contributions were barred by 29 U.S.C. § 186(a)(1) as the owner-operators were not employees. (Appendix B p. 35a).

Petitioner appealed to the Seventh Circuit Court of Appeals. The Court affirmed the District Court's determination that owner-drivers were not employees and the ruling that contributions were barred by 29 U.S.C. § 186(a)(1) as the employment status of the owner-drivers determined the legality of contributions under the L.M.R.A.. The Court cited to the decision of the Ninth Circuit in *Todd v. Benal Concrete Construction Co.*, 710 F.2d 581 (9th Cir. 1983) and stated that:

> Like *Benal*, RNA cannot be required to contribute to the Funds for each of the owner-drivers, when we have determined are independent contractors, when those contributions are not based on the number of hours worked.

(Appendix A p. 18a)

The practical consequence of the applications of the District Court and Seventh Circuit ruling is to provide that contributions may not be made based on work performed by non-employees, even though the contract language at issue bases the contribution amounts on work actually performed. The Seventh Circuit opinion discusses the language of the contract, however, it does not quote the specific provisions which read as follows:

APPENDIX A
HEALTH AND WELFARE

> A.1 Each Employer shall contribute to the (Local 786) Building Material, Chauffeurs, Teamsters and Helpers Welfare Fund of Chicago, which shall be jointly administered by Employer Trustees and Union Trustees as provided in the Trust Agreement, the amount per week stated in Article 16 (16.2-1)

as of the appropriate date stated therein for each employee covered by this Agreement who performs work on any two calendar days in any calendar week, regardless of the number of hours worked, beginning with the first such week of employment. Contributions shall also be made for the weeks of paid vacation, but not if the employee's vacation time occurs during a period of layoff, leave of absence or illness.

APPENDIX B
PENSION

B.1 Each Employer shall contribute to the (Local 786) Building Material Pension Fund, the amount per week stated in Article 16 (16.2-2) as of the appropriate date stated therein for each employee who performs work on any two calendar days in any calendar week, regardless of the number of hours worked; provided the employee has been on the Employer's payroll for at least 30 days.

This language measures contributions on the basis of weeks worked and requires a full week's contribution whenever work is performed on more than 1 (one) calendar day. Nothing in this language requires that contributions be made on behalf of or for the benefit of any driver regardless of whether they own their own truck or drive company equipment. The contract language does not promise that the owner-drivers will receive benefits for the contributions. Indeed the record here contains no evidence that the Trustees of the Fund have made any eligibility determinations.

The Court of Appeals has in effect amended the contract and added the terms "on behalf of" or "for the benefit of" where the parties made no such provision.

The contract at issue contains a provision for work preservation and maintenance of economic standards. The Union has obviously attempted to maintain parity between employee drivers and owner-operators in order to ensure that owner-operators are not compensated at lower rates than employees, a circumstance that would motivate the loss of employee jobs.

In attempting to accomplish this, the work of owner-drivers generates payments for fringe benefits on the same basis as those required for employees. According to the Seventh Circuit's opinion such an arrangement is not legal unless the contributions are counted by hours of work. The Court of Appeals completely discounted the fact that payments are not required unless the owner-driver actually works. It also completely ignored the nature of the Trust Funds and significantly narrowed the exception provided by 29 U.S.C. § 186(c)(5) for such payments.

The practical effect of this conclusion is to overrule this Court's opinion in *Walsh v. Schlect*, 429 U.S. 501 (1977), which allowed such contributions to be made when the payments were measured on the basis of work performed by individuals who were not employees of the employer.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH A DECISION OF THE SUPREME COURT AND WITH PRIOR DECISIONS BY THE SEVENTH CIRCUIT

In *Walsh v. Schlect*, 429 U.S. 501 (1977) this Court provided a rule regarding contributions to *Taft-Hartley* Trust Funds required by labor agreements, which included the requirement of such payments for work performed by individuals not covered by a collective bargaining agreement.

The Court found that an employer could not be required to make payments on "behalf of" or "for the benefit of" non-employees. Such payments would not fit the exception to the Labor Management Relations Act as described in Sections 302(c)(5) and (6). If contributions were required to a Trust Fund measured by the work performed by such employees, these contributions fit the exception and were legal.

The Court's opinion was based on the conclusion that payment of such contributions did not violate the congressional purpose which was to prevent bribery and corruption in collective bargaining. The reasoning of the Court was adopted by the Seventh Circuit in *Chicago Painters and Decorators Pension, Health and Welfare and Deferred Savings Plan Trust Funds v. Karr Brothers, Inc.*, 755 F.2d 1285 (7th Cir. 1984). In that case an employer was sued for breaching a contract provision providing that it would not subcontract work. As measure of damages the

District Court awarded a judgment requiring the employer to pay contributions to the Trust Funds in an amount measured by the work performed by the subcontractors. The Seventh Circuit approved that award rejecting the employer's defense that because it had used independent contractors such payments violated the Labor Management Relations Act 29 U.S.C. § 186(c)(1).

The Seventh Circuit again addressed this same issue in *Illinois Conference of Teamsters Welfare Fund v. Mrowicki*, 44 F.3d 451 (7th Cir. 1994). In *Mrowicki* a Trust Fund sought to enforce a contract provision regarding owner-drivers who provided services to the employer. The collective bargaining agreement provisions for owner-drivers in that case are virtually identical to the provisions of the agreement which underlie Petitioner's claim. The Court in that opinion specifically found that:

> It is clear, then, under Article 25 Sec. 12 and 5 of the CBA's, Double M was required to treat as employees any of its owner-operators who owned and operated single trucks, and who were not used as subcontractors pursuant to Article 8, through out the period of 1986-1989 and 1989-1992 CBA's.

Illinois Conference of Teamsters Welfare Funds v. Mrowicki, 44 F.3d 460.

We would point out that the agreement in *Mrowicki* also stated specifically that the employer was required to contribute to the Fund "for each employee covered by said agreement".

After analyzing these provisions, the Seventh Circuit concluded that the Labor Management Relations Act did not prohibit payments measured by the work of the owner-drivers under the contract between the parties in that case and the Court affirmed a judgment ordering payment of contributions. Citing to this Court's opinion in *Walsh v. Schlect* the Seventh Circuit noted that contributions would be barred only if they were made "on behalf of" or "for the benefit of" the owner-drivers. The Court specifically rejected the argument that contributions were barred, noting that the contract at issue provided that contributions would be made for each hour worked by each employee covered by this agreement, including owner-drivers who performed work for the employer.

The Seventh Circuit analysis in the *Mazzei* case is based on the specific finding that contributions can only be legal when they are counted by the hours worked rather than weeks worked. In reaching that conclusion the Court has altered the test in *Walsh v. Schlect* which did not provide that the L.M.R.A. was violated unless an hour based contribution formula was used.

This court has specifically found that contributions of this nature were legal, unless the agreement promised that they were made "on behalf of" or "for the benefit of" non-employees. Nothing in the Court's opinion determined legality based on the contribution formula having as a basis hours rather than weeks.

The Seventh Circuit opinion adds new criteria never provided by this Court, an hourly calculation requirement. In doing so the court has altered the long standing test provided by *Walsh v. Schlect* which focused on the fact that

payments were based on work performed. In this case the owner-drivers actually performed the work covered by the labor agreement, they drove the trucks on two calendar days in a week. A contribution was owed and the contract requirements are virtually indistinguishable from those approved by this Court, and the Seventh Circuit itself in *Illinois Conference of Teamsters v. Mrowicki.*

The Seventh Circuit decision in this case fashions a new test for the legality of payments as allowed by the exception provided by Congress in the Labor Management Relations Act Section 302(c)(5) (29 U.S.C. § 302(c)(5)). Under the test announced by the Court in this case, payments are legal only when the contribution formula is based on the exact hours worked by the employee. If the Union is successful in negotiating a contribution that is more favorable to its members than an hourly contribution that provision is illegal if applied to subcontractors or independent contractors even if it still requires that contributions require a measurement based on the amounts of work actually performed.

Here if the local union would have negotiated a contribution requirement that required payments based on hours rather than weeks, it would have been legal. No basis exists for that requirement in either the statute itself, the legislative history of the statute or the opinions of this Court regarding the interpretation of the statute as long as contributions are made to a jointly trusteed fund established to provide benefits to employees and their families. *United Mine Workers, etc. v. Robinson*, 455 U.S. 562 (1982). The Trust Funds involved in this case meet both of these requirements.

Both the District Court and the Seventh Circuit determined that the owner-drivers were not employees and recognized that their status was not the only factor to be considered in determining whether or not contributions could legally be paid on the basis of the work that they performed. In crafting a requirement that the calculation of the contribution amount must be based on hours worked, and that days worked in a week was not a sufficient criteria, the Seventh Circuit has modified this Court's holding in *Walsh v. Schlect* and added a criteria never considered by this Court or Congress in defining the exception described by the Labor Management Relations Act 302(c)(5).

II.

THE QUESTION PRESENTED IS IMPORTANT

The transportation workplace is increasingly populated by owner-drivers who own their own vehicles and provide delivery of goods and materials. Truck drivers, whether they own their trucks or not, are paid by various formulas that include a percentage of the revenue generated by their trucks or the number of miles that they travel. These formulas do not take into account compensation on the basis of hours worked therefore and there is no reason to require such criteria to measure the legality of contributions to benefit funds. A labor agreement requiring contributions measured on the basis of the weeks rather than the hours that a driver drives his truck is legal. If the drivers are not employees, by equalizing the cost, a Union may motivate an employer to employ drivers and thus protect the work performed by its members. As the Seventh Circuit has noted, if these contributions provide additional benefits for employees and their families, they accomplish the purpose of the multi-

employer plan. This is particularly true with respect to issues of benefit funding faced by Taft-Hartley fund trustees. On the pension side the law requires that pension credits must be awarded even if the contributions required by a contract are not paid by a deliquent employer. Welfare funds increasingly face efforts to increase and extend benefits for participants and their families in the face of relentless inflation in the cost of health care services. *Central States S.E. and S.W. Fund v. Joe McClelland*, 23 F.3d 1256, 1259 (7th Cir. 1994).

Under established law contributions paid to these funds which exist to provide benefits to participants and their families fit the exception to the anti-bribe provisions of the law which the Seventh Circuit declined to apply to the facts contained in this record.

No evidence in this case indicates that the owner-drivers at issue were promised eligibility for benefits and that contributions were made on their behalf with the promise that benefits would be received. The Seventh Circuit has amended the labor agreement at issue and then changed the applicable law in order to reject its own amendment as a violation of the Labor Management Relations Act. The contributions at issue in this case cannot be cast as the types of bribes Congress has outlawed. The application of the test provided by this court in *Walsh v. Schlect* should result in the payment of the contributions sought by the lawsuit in this case.

This issue is important to guide the negotiation of labor agreements by unions and the funding assumptions of trustees who must determine whether to accept contributions which are needed to fund retirement and health care benefits that may be owed in the future. Prior to the Seventh Circuit's

opinion in this case the law applicable to this issue provided a guideline regarding the legality of such contributions. The guideline is no longer clear and the application of the exception to the Labor Management Relations Act has been changed by this decision.

Petitioner respectfully submits that this is an important issue requiring a determination by this Court. If a change in the law is required it should be made by this Court on a question of national labor policy.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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